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No. 687

In the Supreme Court of the United States

October Term, 1962

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United States of America

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 637

WILLIAM LAWRENCE LEMONS AND GRADY INGRAM, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1–7; R. 6–13) is reported at 309 F. 2d 168.

JURISDICTION

The judgment of the court of appeals was entered on October 5, 1962 (R. 14). By order of November 5, 1962, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including December 5, 1962, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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QUESTION PRESENTED

Whether the evidence was sufficient to support the convictions of petitioners for conspiracy to violate the internal revenue laws relating to the concealment and transportation of illicit liquor.

STATEMENT

Petitioners Lemons and Ingram, together with seven other defendants and various co-conspirators, were charged in an indictment returned in the United States District Court for the Middle District of North Carolina with a conspiracy to violate internal revenue laws [26 U.S.C. 7206(4), 5205(a)(2), and 5604(a)(1)] relating to the unlawful concealment and transportation of distilled spirits (App. 1–6). The jury found all nine defendants guilty (Pet. App. 2). Lemons was sentenced to three years' imprisonment, all but 85 days of which was suspended under 18 U.S.C. 3651, and a $1,500 fine. Ingram was sentenced to imprisonment for four years and a $1,500 fine (R. 2, 3). On appeal, the convictions were affirmed (R. 2, 14).

Evidence adduced at the trial, so far as pertinent to these petitioners, may be summarized as follows:

Petitioner Lemons operated the W. L. Lemons Garage for automobile repairs at Draper, North Carolina (Tr. 390, 519, 520).[1] Lemons, an excellent mechanic, had a reputation for installing high-speed motors, heavy duty springs and cut-off switches (Tr. 31, 139, 470, 528, 533, 567). Lemons worked on ve-

[1] "Tr." refers to the transcript of the trial testimony, a copy of which we are filing with the Clerk of this Court.

hicles either owned or driven by other defendants, and on a number of occasions these vehicles were parked at his garage (Tr. 331, 362, 379, 564). Lemons' garage had a public telephone from which calls were directed to homes of various conspirators (Pet. App. 4; Tr. 3–P, 3–Q). During the period covered by the indictment, defendant Handy made a number of long distance telephone calls to Lemons' garage (Tr. 198, 200–201).

During September and October, 1960, Alcohol and Tobacco Tax Investigator Brown, working "undercover," was employed by one Willie Rakes, Jr., to haul illicit whiskey from North Carolina to Virginia (Tr. 23–25). On October 14, 1960, Brown was with Rakes when Rakes brought to Lemons' garage a 1957 Ford which Rakes said he would like "shocked down" so that he could use it to haul whiskey. Lemons said he would do the work for a fair price, and that Rakes could pay in either cash or liquor. Lemons suggested that he knew a man who could get a bill of sale notarized so that title could be obtained in a false name as had been done on other liquor cars in the past (Tr. 30–32). During the conversation Lemons stated "he had talked to Grady [petitioner Ingram] and the boys, and he understood we were pushing a lot of whiskey; and he said that he knew where we were getting it, and where it was going" (Tr. 33).

On October 16, 1960, Brown went to the home of petitioner Ingram at Ferrum, Virginia to purchase non-taxpaid brandy. Ingram did not have brandy at that time, but offered to sell non-taxpaid whiskey

at $27.00 per case. Ingram promised to obtain brandy the following week; and told Brown he could pay either Ingram or Roy Webb (Tr. 34–35). A few minutes later, Brown observed Ingram talking to two men in a 1956 Ford. One of these men was counting out between $500 and $700 and placing it in Ingram's hands. Ingram told Brown it was collection money for some liquor (Tr. 35–36). Four days later, Roy Webb told Brown that he had talked with Ingram about the brandy order and would make delivery when more brandy was available (Tr. 36–37).

On November 23, 1960, defendant Martin, driving a 1959 Ford equipped with a high-speed motor, built-up rear springs, and a switch to cut off the rear lights, was arrested for speeding and reckless driving. Under the front seat was a 1960 Virginia License tag 530438 which had been issued to defendant Lloyd Webb (Tr. 44–46, 71–73, 255–256, 359). Defendant Roy Webb said that petitioner Lemons would pick up the car, and on November 28 Lemons did so (Tr. 74–75).

On many occasions during the periods covered by the indictment a 1955 Mercury registered to W. L. Lemons Garage (Tr. 48, 159, 273) was observed while in use by Handy and Lloyd Webb or parked at the home of Lloyd Webb (Tr. 49, 50, 273, 275, 276, 277, 280, 281, 299, 303–304, 306, 311, 313, 318, 329, 349). In April 1961, automobile salesman Johnson sold a 1950 Chevrolet to an unknown male who gave the fictitious name of Nelson Williams and was in the company of petitioner Lemons (Tr. 161–

167, 319–322). On April 25, 1961, Handy was observed operating this 1950 Chevrolet in the area of Danville, Virginia, where he was joined by an unknown driver of the Mercury registered to Lemons' garage (Tr. 171–173). On April 26, this 1950 Chevrolet, driven by co-conspirator Sheets, was seized by a state officer and found to be transporting 25 cases of non-taxpaid whiskey (Tr. 193–196).

On the night of April 17, 1961, Alcohol and Tobacco Tax Investigator Bryzana observed petitioner Ingram in the company of Lloyd Webb and Handy. Ingram was driving a 1953 Chevrolet truck owned by Lloyd Webb and Handy was operating the 1955 Mercury registered to Lemons' garage (Tr. 311–316). At various other times, petitioner Ingram was observed in the company of Lloyd Webb and Handy (Tr. 282, 283, 302, 304, 326, 338).

A 1961 Ford was registered in the name of Marcella Ingram, the wife of petitioner Ingram, and the certificate of title showed a $600.00 lien in favor of petitioner Lemons (Tr. 300–301). This automobile was driven by Lloyd Webb, and on many occasions was observed parked in front of his Danville home (Tr. 80, 286, 300, 304, 316, 325–326). On May 23, 1961, when this 1961 Ford was parked at Lemons' garage, an unidentified man took a car seat from the garage and placed the seat in the back of the Ford (Tr. 334–335). This car seat was later found at the home of defendant Carter on June 14, 1961, when four other automobile seats and six gallons of non-taxpaid whiskey were seized (Tr. 336, 55–56, 88).

On October 18, 1961, Lloyd Webb was observed driving a 1950 Ford with North Carolina plates registered to W. L. Lemons Garage. On September 20, 1961, Handy had been observed operating this same vehicle (Tr. 378–379). On October 23, 1961, when petitioner Lemons was arrested, this 1950 Ford was parked at his garage (Tr. 379).

ARGUMENT

The sufficiency of the evidence to support petitioners' convictions presents no issue for review by this Court. The evidence justified the inference that each petitioner was, in his own way, an informed and interested participant in the conspiracy to sell and transport non-taxpaid liquor. See *Direct Sales Co.* v. *United States*, 319 U.S. 703; *Blumenthal* v. *United States*, 332 U.S. 539; *United States* v. *Piampiano*, 271 F. 2d 273 (C.A. 2); *Orton* v. *United States*, 221 F. 2d 632 (C.A. 4), certiorari denied, 350 U.S. 821; *Simpson* v. *United States*, 11 F. 2d 591 (C.A. 4), certiorari denied, 271 U.S. 674.

Petitioner Lemons was not as he claims one who merely performed automobile services, innocent in themselves, for persons who he knew intended to use the vehicles in criminal operations. His activities went well beyond passive acquiescence. His garage was a place from which calls were directed to the homes of the conspirators. Cars used by the conspirators were registered in the name of his garage. That this was knowingly done to assist the conspiracy could be inferred from evidence that Lemons knew about the transportation of illicit whiskey and the procedure of having false names on titles.

As to petitioner Ingram, the evidence shows more than mere association with the other conspirators. Ingram offered to sell non-taxpaid brandy and whiskey to Brown, stating that payment could be either to himself or Webb. Webb later talked with Brown about the brandy, a circumstance indicating that Ingram had communicated with him. The fact that delivery was not made was a factor to be considered by the trier of the facts, but it certainly does not overcome the inference that Ingram was involved. In addition, the 1961 Ford, registered in the name of Ingram's wife and used by the defendants, was parked at Lemons' garage when an unidentified man placed in the Ford a car seat later found at defendant Carter's home when non-taxpaid whiskey was seized. The totality of the circumstances warranted the jury's verdict.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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